

KEPSA WEEKLY LEGISLATIVE BULLETIN

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The legislative week in review

Review of the VAT Act 2013 kicks off

The National Assembly has this past week considered several amendments to the VAT Act 2013 that were proposed by the Member of Parliament for Suba, Hon. John Mbadi. Following the assent by President Uhuru Kenyatta of the VAT Act last year, concerns were raised over taxation of certain products, goods and services. However, the VAT Act could not be subjected to immediate review.

The National Assembly last week, through amendments moved by the chair on the departmental committee on finance Benjamin Langat, agreed to exempt payment of VAT on



raw materials used in the manufacture of medicines under the VAT (Amendment) Bill. Inputs and raw materials supplied to manufacturers licensed by the Pharmacy and Poisons Board will also be tax exempt irrespective of whether they are imported or sourced locally. Specialized solar equipment's and accessories including solar water heaters and deep cycle-sealed batteries which exclusively use or store solar power are now tax exempt. The same applies to air ticketing services offered by travel agents and unprocessed green tea.

Areas on which petitions had been made for tax exemption but which failed to win exemption include credit reference bureau and postal services and water drilling services. Disinfectants, insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant health regulators also failed to make the list of tax exempt products. In essence, the amendments to the VAT Act 2013 have increased the number of goods and services that are tax exempt.



Procurement law now paves way for youth empowerment

The National Assembly has now passed a Bill that seeks to amend the Public Procurement and Disposal Act that will now require the national and county governments, including State Corporations, to earmark 30 per cent of their procurement to youth, women and persons with disabilities. The amendment brought through the Public Procurement and Disposal (amendment) Bill 2014 was sponsored by nominated MP, Johnstone Sakaja and is seen as fulfilling one of the election campaign pledges of the Jubilee government on youth empowerment.

The youth will access the 30 per cent quota by applying either as individuals, associations or incorporated companies that draw membership from persons below the age of 35. The Cabinet Secretary responsible for the Public Procurement and Disposal Act is expected to issue guidelines on how the 30 per cent quota requirement will be implemented. The national and



county governments, including public entities and State Corporations, will be expected to periodically report on implementation of this quota requirement.

The amendment to the Public Procurement and Disposal Act is seen as reinforcing Articles 55 and 227(2) of the Constitution which seek affirmative action for the economic advancement of marginalized groups which would include the youth, women and persons with disabilities.

Legislative Watch Tower

This section reviews Bills in the pipeline and due for debate before the National Assembly and/or the Senate highlighting the key elements and provisions of the proposed legislation. In this week's Issue, we focus on the Scrap Metal Bill, 2014

The National Assembly has formally published the Scrap Metal Bill 2014. The Bill will now be subject to input from various stakeholders in line with the constitutional requirement for public participation in the development of laws and policies. This Bill comes against the backdrop of growing concern on the need to provide a legal framework which would protect the business of

legitimate scrap metal dealers while providing sufficient sanctions against the menace of vandalism of infrastructure utilities by unscrupulous persons.

One of the most significant features of this Bill is the creation of a Scrap Metal Council which will be responsible for implementing various provisions of the Bill. This Council will comprise of a broad representation drawn from various entities including government Ministries, the Police, Kenya Revenue Authority, Utility companies, the Private Sector and associations in the scrap metal business. The Council will be expected to provide guidance on various issues such as the disposal of excess scrap metal material and recommend measures to contain the preponderance of vandalism affecting infrastructure utilities.

Importantly, the Council will be vested with the responsibility of granting and renewing licences for those engaged in the scrap metal business including, vetting applicants seeking to trade in scrap metal. This is seen as an important measure to more effectively regulate trade and ensure



that those licensed abide by the regulations established under the proposed law. Indeed, the clear policy goal as enunciated under the Bill is to “bring order and integrity to the scrap metal trade”. This provision will help avoid undue delay and create business certainty for

applicants seeking to trade in scrap metal. The requirement to furnish reasons for refusal to grant a license besides facilitating appeals by aggrieved applicants also helps avoid arbitrary and unfair decision making that is not qualified on a clear basis.

As expected, the Bill proposes a number of sanctions by way of penalties and possible jail terms for those who breach its provisions in what reflects a strong determination to create a strong regulatory framework in the business. They may, however, be strong views on whether some of the offences created under the Bill unduly expose legitimate businesses to the risk of punitive sanction such as the obligation to maintain records of the variety of scrap metals dealt in. A trader who fails to maintain such a record is liable to a fine not exceeding two million shillings at the first instance.

Upcoming Bills

National Assembly seeks public input on Psychotherapists Bill

The Psychotherapists Bill, 2013 has been presented to the National Assembly through a first reading and has now been committed to the departmental committee on health before it is presented back to the House for its second reading. The committee will now embark on receiving the views of various stakeholders on various provisions contained in the Bill. Comments on the Bill must be presented to the clerk of the National Assembly by April 30, 2014.

The Bill was published last year under the broader title of Counselors, Psychologists and Psychotherapists Bill, 2013. At the time of its initial publication, the Bill sought to create a framework for training, registration, licensing, practice and standards of counselors, psychologists and psychotherapists in Kenya.

It proposed to create a board for counselors, psychologists and psychotherapists to regulate the issuance of licenses and practicing certificates in addition to enforcing professional standards and disciplinary actions and procedures. Based on the public notification issued by the Clerk of the National Assembly, it is not clear if the Bill will now be restricted to psychotherapists.

